

HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No. 13168 of 2007

Date: 22.11.2007

Between:

Duddupudi Gopalam

... Petitioner

and

The Government of A.P.,
Rep. by its Secretary, Endowments Department,
Hyderabad & others

... Respondents

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ORDER:

Heard Ms. D. Geetha, the learned counsel representing the writ petitioner, the learned Assistant Government Pleader for Endowments representing respondent Nos. 1 to 3 and Sri V.T.M. Prasad, the learned Standing Counsel representing respondent No.4.

2. The learned counsel for the writ petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition and had pointed out to the impugned order and would maintain that there was no service of notice at any point of time and even otherwise, the order in proceedings R.C.No.A1/4592/2005 Adm dated 29.06.2006 was never served on the writ petitioner and, hence, in the facts and circumstances, proper enquiry is to be held by giving appropriate opportunity to the writ petitioner and in the light of the same, especially in the light of the rules governing the field, the impugned order is bound to be set aside.

3. On the contrary, the learned Assistant Government Pleader for Endowments and Sri V.T.M. Prasad, the learned Standing Counsel representing respondent No.4 would submit that proper procedure had been followed and also had placed the records before this Court to show that the order, in fact, had been served and endorsement was made by the writ petitioner and, hence, the stand taken by him cannot be sustained in the facts and circumstances of the case. The learned counsel also placed reliance on certain decisions.

4. The writ petition is filed for a writ of mandamus declaring the impugned action of respondent No.3 in issuing proceedings in R.C.No.A1/4592/2005 Adm dated 29.06.2006 and consequential impugned auction notice dated 14.06.2007 issued by respondent No.4 calling for the bids for Ac.1.80 cents in Survey No.152 of Sri

Someswara Swamy Devasthanam situated at Velivennu Village, Undrajavaram Mandal, West Godavari District is highly illegal, arbitrary and contrary to the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 and G.O.Ms.No.379 issued by the Government and also against the principles of natural justice, consequently set aside the same and pass such other order or orders in the interest of justice.

5. It is the case of the petitioner that he is a landless poor person and eking out livelihood by cultivating the land of Sri Someswara Swamyvari Devasthanam (respondent No.4) in an extent of Ac.1.80 cents situated in Survey No.152 of Velivennu Village, Undrajavaram Mandal, West Godavari District, for the last 40 years; that originally his father was a tenant of the said land and after his death, the said tenancy was transferred in his name, that since then he had been in possession of the said property. Further, it is stated that the said land is an average yielding land and they had spent nearly Rs.10,000/- to raise the first crop. It is also stated that while the matter stood thus, in 2002, respondent No.4 called the petitioner under the guise of negotiations for enhancement of lease amount and demanded 43 bags as against 35 bags, that though the petitioner requested respondent No.4 stating that the total yielding itself is 50 bags, the latter enhanced the lease for 43 bags, that since there is no other go, the petitioner was forced to accept the said enhancement and he has been continuing to pay the same with the pond hope that he will get the land under Section 82(2) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as 'the Act'). It is also stated that the petitioner applied for transfer of land as he is the existing tenant for more than 40 years; that respondent No.4 distributed pamphlets of the impugned auction notice

dated 14.06.2007 calling for the bids, without even making proclamation like beating drums (tom tom) in the village for open auction of the lands belonging to Devasthanam. It is also stated that the Devasthanam has Ac.14.61 cents of land in different survey numbers in the village and the petitioner has been in possession of Ac.1.80 cents of land in Survey No.152 which was shown as item No.4 in the impugned notice; that immediately the petitioner approached respondent No.4 and enquired about the impugned auction notice, but he was served with the proceedings of respondent No.3 in R.C.No.A1/4592/2005 dated 29.06.2006 after one year to the effect that the petitioner is not a landless poor person, as if it followed the entire procedure as per the rules framed in G.O.Ms.No.379; that thereafter he filed income certificate issued by the Mandal Revenue Officer, Undrajavaram showing that he is a landless poor person and his income is only Rs.10,000/- per year. It is also stated that the petitioner accepted lease at the rate of 43 bags per year and has been continuously paying the same without any arrears; that though the current rate of maktha in the surrounding villages is 20 kata bags per acre, the petitioner has been paying it at 24 bags. Further, it is stated that the Government had issued G.O.Ms.No. 379 prescribing the rules for eviction of the persons from endowments lands; that as per Section 82 of the Act, respondent Nos. 2 to 4 have to offer the land to the existing tenants for the sale who are in possession of the property since more than six years, that as per Rule 4 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003, the petitioner has got right to file an appeal before the Regional Joint Commissioner against the order of respondent No.3, but in the present case, respondent No.4 intentionally avoided serving proceedings on him in time. Further, it is

stated that even as per Rule 5(1), the petitioner is entitled to a notice of eviction assuming that he was not a landless poor person under Form 1, but such notice was never issued to him. It is also stated that the petitioner has Ac.0.58 cents of dry land of his own and except that, there is no other property. Thus, in the said circumstances, it is stated that if the auction is proceeded with, the petitioner will be put to serious loss.

6. Along with W.V.M.P.No.2028 of 2007 filed by respondent No.4 to vacate the interim order, a counter affidavit had been filed, wherein the following averments had been made:

It is stated that the father of the petitioner Sri Duddupadi Chandram entered the land in question on 10.06.1977 as the highest bidder in open auction for fasli 1387 to 1392 for six years, but there are no approved lease orders in his favour; that he continued as an encroacher and was paying 35 bags of maktha per year for the entire Ac.1.80 cents towards damages; that he was not eligible for being declared as land less poor, as he was not an approved lessee either six years before the commencement of the Act No.30 of 1987 or thereafter. The maktha towards damages for being in illegal occupation was increased from 1995-96 to 39 bags till his time of death in the year 2001-02. Further, it is stated that it is wrong on the part of the petitioner to allege that the land was transferred in favour of him; that in fact, there is no such provision in the Act and the petitioner is also not entitled to the benefit of the provisions of Section 82 of the Act. It is also averred that it is wrong on the part of the petitioner to allege in para 4 of his affidavit that he was coerced to enhance the maktha being paid towards damages to 43 bags; that he has done it at his own will on being granted approved lease for three years from 2002-03 to 2004-05 by the Deputy Commissioner of Endowments,

Kakinada. It is also stated that after 30.04.2005, when the lease expired, he has continued to be in illegal possession of the said land. Further it is stated that Form-I notice was served on the petitioner on 01.04.2005 and his application dated 18.04.2005 for declaration as landless poor person made to the Assistant Commissioner of Endowments, Eluru, was rejected on 29.06.2006 and the same was communicated to him on 14.09.2006 and not on 18.06.2007 as alleged in para 6 of the affidavit. It is stated that the procedure contemplated for eviction under Section 83 of the Act No.30 of 1987 is not applicable to persons whose lease has expired; that they have to hand over possession and leave the land and participate in the next auction. It is further stated that the petitioner was not disturbed from 2005 though his lease expired on 31.03.2005 as his application dated 18.04.2005 for declaration as landless poor person was pending before the Assistant Commissioner of Endowments, Eluru. It is also stated that though his application was rejected by the Assistant Commissioner on 29.06.2006 and served on him on 14.09.2006, he was allowed to continue on the land as the crop raised by him was ready for harvesting. Further, it is stated that the auction was notified to be held on 26.06.2007; that auction was held on 05.07.2007 and the petitioner was the highest bidder at 44 bags per year for three years 2007-08 to 2009-10. In the said circumstances, it was prayed that the interim order is to be vacated.

7. In the reply affidavit filed by the petitioner, the stand taken by him in the affidavit filed in support of the writ petition had been reiterated and it is asserted that the petitioner is a landless poor person and the procedure had not been followed. In the records produced before this Court, an endorsement was pointed out relating to the service of the order as specified in the counter affidavit filed by

respondent No.4.

8. Strong reliance was placed on the decision reported in

V.V. Krishna Reddy v. Ramalingeswara Swamy Devasthanam^[1],
wherein this Court at paragraphs 3 and 4 observed:

“ 3. Rule 7 of the A.P. Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short ‘the Rules’) and provisions of similar rules earlier to these; whether made under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 or under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short ‘the New Act’), as well as the general principles of Administrative Law and authoritative precedents, obligate Endowment properties to be alienated including by way of lease only by a transparent public process in a manner which would ensure the fetching of a competitive return on Endowment properties and not by clandestine and subrosa private understandings between Endowment officers or managers of temples and private individuals. The unauthorized occupation of the Endowment lands by the petitioners without a lease deed executed in their favour by or on behalf of the Endowment after following the due process of law; substantive and procedural, would not elevate the occupation of the petitioners to the status of cultivating tenants as understood by the provisions of the New Act. The expression ‘cultivating tenant’ in Section 82 of the New Act, must mean a cultivating tenant under a lawful, duly executed lease and not a person who is the beneficiary of a negligent or careless exercise of ultra vires conduct of endowment officials acting in defiance of the provisions of the Act and the Statutory rules – see in this connection (*Bhudan Singh v. Nabi Bux*, 1969(2) SCC 481 – paras 12, 13). There is no exclusion in this principle by the mere fact that the petitioners are in such an unauthorized occupation since long or from times immemorial. The petitioners do not claim any prescriptive title or ownership to the lands in question.

4. In the circumstances above, as the petitioners are not cultivating tenants within the meaning of the said expression qua

Section 82 of the New Act or the Rules, the petitioners cannot be considered to be landless poor persons for the benefits under Section 82 of the Act. As they are encroachers, as is apparent, they cannot resist the impugned notification issued by the 1st respondent-Devasthanam, proposing conduct of a public auction for grant of leasehold rights of its lands. The petitioners have no *locus standi* to claim any such relief.”

9. No doubt, the rules governing the field had been pointed out and it is stated that acknowledgment relating to the service of the notice had not been produced and, hence, for non-compliance of the rules, the writ petitioner is bound to succeed. In the peculiar facts and circumstances of the case and also in the light of the records produced before this Court, I am of the considered opinion that the respondents are able to satisfy this Court relating to the service of the order. The remedy available to the writ petitioner had not been availed and for the reasons best known, the writ petitioner, having participated in the auction and having been successful bidder, is again taking a stand before this Court relating to the plea of landless poor person and that he was not given proper opportunity before making the impugned order. In the facts of the case, this Court is of the considered opinion that the stand taken by the petitioner cannot be said to be a bona fide one.

10. Accordingly, in the light of the specific stand taken in the counter-affidavit of respondent No.4, this Court is satisfied that the writ petition is devoid of merit and, accordingly, the same shall stand dismissed. No order as to costs.

(P.S. NARAYANA, J)

22nd November 2007
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[\[1\]](#) 2007(1) ALD 262